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GE HEALTHCARE BIO-SCIENCES CORP.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

PETER JAY GERBER and MIRIAM  
GOLDBERG,

Plaintiffs,

v.

BAYER CORPORATION AND  
BAYER HEALTHCARE  
PHARMACEUTICALS, INC.; BMC  
DIAGNOSTICS, INC.; CALIFORNIA  
PACIFIC MEDICAL CENTER;  
GENERAL ELECTRIC COMPANY;  
GE HEALTHCARE, INC.; GE  
HEALTHCARE BIO-SCIENCES  
CORP.; McKESSON  
CORPORATION; MERRY X-RAY  
CHEMICAL CORP.; and DOES 1  
through 35

Defendants.

CASE NO. CV-07-5918-JSW

**DEFENDANT GE HEALTHCARE BIO-  
SCIENCES CORP.'S REQUEST FOR  
ENLARGEMENT OF TIME TO FILE  
RESPONSIVE PLEADING;  
DECLARATION OF STEPHANIE A.  
HINGLE**

**[Filed Concurrently with Proposed Order]**

**[Rule 6(b), Fed. R. Civ. Proc.]**

**[Jury Trial Demanded]**

(San Francisco County Superior Court Case No.  
CGC07468577)

Defendant GE Healthcare Bio-Sciences Corp. ("Bio-Sciences") for itself alone respectfully requests that this Court enlarge the time allowed for it to file a responsive pleading in the above-entitled matter. This Request is made pursuant to Rule 6(b) of the Federal Rules of Civil Procedure.

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4841-2079-4370.1

REQUEST FOR ENLARGEMENT OF TIME TO FILE RESPONSIVE PLEADING CASE NO. CV-07-5918-JSW

1 As set forth more fully in the attached Declaration of Stephanie A. Hingle, good  
2 cause exists for an enlargement of time, and thus, it is requested that this Court allow GE  
3 Healthcare Bio-Sciences Corp. to respond to Plaintiffs' Complaint on or before December  
4 31, 2007.

5  
6 Dated: December 4, 2007

KUTAK ROCK LLP

7  
8 By: Stephanie Hingle  
9 Deborah C. Prosser  
10 Stephanie A. Hingle  
11 Attorneys for Defendant  
12 GE HEALTHCARE BIO-SCIENCES,  
13 CORP.  
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**DECLARATION OF STEPHANIE A. HINGLE**

I, Stephanie A. Hingle, declare as follows:

1. I am an attorney licensed to practice before the United States District Court for the Central District of California and am Of Counsel with the law firm of Kutak Rock, LLP, attorneys of record for Defendant GE Healthcare Bio-Sciences Corp. ("Bio-Sciences") in the above-entitled action. I make this declaration in support of Defendant's Request for an Enlargement of Time to File Responsive Pleading.

2. I have personal knowledge of the facts stated below, except as to those facts stated on information and belief, and as to those matters I believe them to be true. If called and sworn as a witness, I could testify competently to the matters set forth in this declaration.

3. This action was removed to federal court on November 21, 2007, making the removing defendants' responsive pleading due on or before November 30, 2007 pursuant to Rules 6(a) and 81(c) of the Federal Rules of Civil Procedure.

4. This action was originally assigned to Magistrate Judge Elizabeth LaPorte. However, upon Plaintiffs' filing of a Declination to Proceed Before Magistrate Judge, the matter was reassigned to the Hon. Jeffrey S. White.

5. On November 29, 2007, prior to the expiration of the time for filing a responsive pleading, Bio-Sciences requested an enlargement of the time period. This request was made prior to the reassignment of this matter to Judge White.

6. On December 4, 2007, the undersigned was advised by Judge White's deputy clerk to resubmit the request for an enlargement.

7. As of November 29, 2007, Bio-Sciences was prepared and was ready to file a motion to dismiss under Rule 12(b)(6) on the ground that it was not involved in any commercial activity with respect to the product at issue, Omniscan™, and thus no plausible cause of action exists as to Bio-Sciences. Said motion is supported by sworn affidavit.

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CASE NO. CV-07-5918

REQUEST FOR ENLARGEMENT OF TIME TO FILE RESPONSIVE PLEADING CASE NO. CV-07-5918-JSW

8. Bio-Sciences has requested that Plaintiffs voluntarily dismiss the Complaint as to Bio-Sciences and has agreed to informally provide Plaintiffs with evidentiary support of the grounds for dismissal.

9. Plaintiffs' counsel, Larry Gornick of Levin Simes, has agreed to consider the evidentiary support to determine whether voluntary dismissal is appropriate.

10. In the meantime, Plaintiffs have agreed to allow Bio-Sciences an additional thirty (30) days from November 30, 2007 to file its responsive pleading.

11. The request to enlarge time is being made to allow the parties time to resolve this issue without the need for court intervention and to avoid burdening the Court unnecessarily with a motion to dismiss.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct, and that I executed this declaration on December 4, 2007 at Los Angeles, California.

Stephanie A. Hingle  
Stephanie A. Hingle, Declarant

**PROOF OF SERVICE**

**Peter Jay Gerber, et al. vs. Bayer Corporation, et al.**  
**U.S. District Court, Northern District of California,**  
**San Francisco Division, Case No. CV-07-5918**  
**(San Francisco Superior Court Case No.: CGC-07-468577)**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the City of Los Angeles in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 515 S. Figueroa Street, Suite 1240, Los Angeles, California 90071.

On December 4, 2007, I served the following documents described as

**DEFENDANT GE HEALTHCARE BIO-SCIENCES CORP.'S REQUEST FOR  
ENLARGMENT OF TIME TO FILE RESPONSIVE PLEADING;  
DECLARATION OF STEPHANIE A. HINGLE**

on all interested parties in this action by placing a true copy or the original thereof enclosed in a sealed envelope or package addressed as stated on the attached mailing list.

☐ **(BY FACSIMILE)** The facsimile machine I used complied with Rule 2.301(3) and no error was reported by the machine. Pursuant to Rule 2.306(g)(4), I caused the machine to print a record of the transmission.

☐ **(BY MAIL, 1013a, 2015.5 C.C.P.)** I deposited such envelope in the mail at Irvine, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, this document will be deposited with the U.S. Postal Service on this date with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **(BY NOTICE OF ELECTRONIC FILING)** Counsel who have consented to electronic service have been automatically served by the Notice of Electronic Filing, which is automatically generated by CM/ECF at the time said document was filed, and which constitutes service pursuant to FRCP 5(b)(2)(D).

☐ **(BY OVERNIGHT DELIVERY/COURIER)** I delivered such envelope or package to a courier or driver authorized by the express service carrier; or deposited such envelope or package to a regularly maintained drop box or facility to receive documents by the express service carrier with delivery fees provided for.


☐ **(BY MESSENGER)** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and providing them to a messenger for personal service. (A proof of service executed by the messenger will be filed in compliance with the *Code of Civil Procedure*)

1 [ ] **(BY PERSONAL SERVICE)** I delivered the foregoing envelope by hand to the  
2 offices of the addressee.

3 [ ] **(STATE)** I declare under penalty of perjury under the laws of the State of  
4 California that the above is true and correct.

5 [XX] **(FEDERAL)** I declare that I am employed in the office of a member of the bar of  
6 this Court at whose direction service was made.

7 Executed on [DATE], at Los Angeles, California.



8 Virginia L. Gomez

## SERVICE LIST

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